

No. 16,143

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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AETNA STEEL PRODUCTS CORPORATION,

*Appellant,*

*vs.*

SOUTHWEST PRODUCTS Co., a corporation,

*Appellee.*

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## APPELLANT'S REPLY BRIEF.

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**APPELLANT'S REPLY BRIEF.**

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"The first point which comes to notice is that nowhere does appellant tell us of what the invention consists. If claimant cannot make a non-technical explanation of discovery, there is some indication that invention does not exist."

*Jacuzzi Bros. v. Berkeley Pump Co., et al.*, 191 F.  
2d 632 (C. A. 9).

The fact that plaintiff cannot and does not identify a new combination of new elements performing a new result supports defendant's position that there is no invention and that the trial court did not apply correct criteria of law.

Plaintiff's reply brief does not challenge or contradict a single evidentiary fact presented in defendant's brief. The facts show that trial court's findings are erroneous and conflicting. Plaintiff's brief is therefore directed to totally irrelevant matters and contains a myriad of contradictions and improper statements. It is believed that plaintiff's reply brief is an imposition upon this Court. Instead of attempting to refute all of the items, a short reply directed to the essential elements will be of greater value to this Court.

## PLAINTIFF'S ARGUMENT EMPHASIZES INVALIDITY.

A ball and a race around it is not the invention of patent No. 2,626,841. (This is shown by Fiegel 1,693,748 [R. 1368], Skillman, Paulus 2,252,351 [R. 1397], and other prior art patents.) The public has the right to make such bearings and to utilize whatever results flow therefrom. Plaintiff cannot state that stresses in tension and compression constitute the invention because it was admitted that Potter did not invent such stresses [Admission 34, R. 92]. The original application for patent No. 2,626,841 [Ex. A] did not contain any references to such stresses [Admitted Fact 37, R. 94]. The trial court held that such stresses were not a part of the patent and not necessary [R. 1285].

So plaintiff is driven to the allegation that "the invention is in the combination of elements set forth therein (a ball and a race) including as a novel element thereof a ball race having the defined *stress pattern*" (Pltf. Br. p. 59). This is ridiculous allegation but plaintiff appears to take it very seriously; the brief contains almost fifty references to "stress pattern." The evidence and the testimony of plaintiff's expert Barish clearly shows that there really was no invention in view of the prior art.

"Q. Referring back to Taylor, and we will be almost through Mr. Barish. A. Yes, sir.

Q. Let me try to just summarize it. This spherical member is part of the die, is that correct? A. Yes, sir.

Q. And it gets into intimate and direct contact with the entire inner surface of the outer race As a result of the coining? A. Yes, sir.

Q. And at the end of the coining operation the stresses in this race ring closely resemble those which obtain in Potter. A. Yes, sir.

\* \* \* \* \*

Q. Now assuming that whoever was making this had also read the Heim patent, would it be beyond the skill of a skilled mechanic to hammer on the outside of that Taylor ring to liberate that Taylor assembly—to liberate it? A. No, it would not.” [R. 1131, 1132.]

Note that “intimate and direct contact” is the same as a vise-like grip [R. 1137]. The ball is held tight. The prior art shows the ball and the race, it shows tightly held balls [Hoern, R. 1378, line 27; Paulus 2,252,351, R. 1398, line 24]; Heim [R. 1419] was specifically directed to the problem of liberating tight bearings by hammering them. Plaintiff’s expert admits the combination is mechanical skill and not invention (35 U. S. C. §103).

To overcome this, plaintiff criticizes the disclosure of the Taylor patent and states that although Taylor states that the spherical member is very strongly held by the ring, this cannot be so. The argument is futile and contrary to fact.

Invention cannot be predicated upon a theory of stresses which perforce existed in race rings of old patents such as Fiegel [R. 1368], Skillman [R. 1371], Paulus [R. 1397] or Taylor 2,382,349 [R. 1402].

The fumbling, switching and uncertainty which characterizes plaintiff’s attempt to excuse the patents in suit also shows that:

1. The patents in suit are **invalid for ambiguity** and failure to define an invention with necessary clarity



(as required by 35 U. S. C. §112 and leading cases such as *General Electric Co. v. Wabash Co.*, 304 U. S. 364),

2. The patents in suit are **invalid in claiming more than was invented**. The old ball and old race, performing their old function are claimed. The claims are invalid under the rule of *Lincoln Engineering Co. v. Stewart-Warner*, 303 U. S. 545 at 549,
3. The patents are not infringed. The physical exhibits before the court speak for themselves. A guage can be inserted between the ball and race of bearings as they come from the forming press. Intimate and direct contact between the entire surfaces does not exist. Plaintiff insisted that complete contact was essential [R. 900-905]; **defendant does not get such contact**,

“Q. Do your spherical self-aligning bearings have a race at any time after forming, the inner surface of the race being in direct and intimate contact with the ball? A. No” [R. 975].

### **PATENTS CANNOT COVER WHAT IS IN PUBLIC DOMAIN.**

Patent No. 2,626,841 cannot cover the combination of elements eliminated from the patent by rejected and withdrawn claims.

“Claims which have been allowed cannot, by construction, be read to cover what has thus been eliminated from the patent. *Schriber-Schroth Co. v. Cleveland Trust Co.*, 311 U. S. 211, 85 L. Ed. 132, 61 S. Ct. 235, Rehearing denied, 312 U. S. 654, 714. 85 L. Ed. 1143, 1144, 61 S. Ct. 727, 728.”

*Hall et al. v. Wright et al.*, 240 F. 2d 787 (C. A. 9).



Patent No. 2,626,841 cannot cover what is stated in claims 1, 2 and 5 cancelled from Exhibit A (claim 1 is set out on the chart facing p. 32 of Deft. Br.). Plaintiff admits that the claims allowed in patent No. 2,626,841 are “directed to the same combination” of a ball and race, “the only essential difference” being new matter added by amendment in March, 1950 (Pltf. Br. p. 31).

Therefore the same old combination of ball and one-piece race is not the invention—that was cancelled. The purported invention must be found in the new matter on the so-called “stress pattern.” Plaintiff correctly states that this new matter is “essential” to any holding of validity. However, this hodgepodge of words was **not a part of the original invention** and is so vague as to be contrary to the statutory requirement that claims be clear and definite (35 U. S. C. §112).

“The statutory requirements of particularity and distinctness in claims is met only when they clearly distinguish what is claimed from what went before it in the art and clearly circumscribe what is foreclosed from future enterprise. \* \* \* Moreover, the claims must be reasonably clear cut to enable courts to determine whether novelty and invention are genuine.”

*United Carbon Co. v. Binney Co.*, 317 U. S. 228 at 236.

Furthermore please note that this new added matter is right at the “exact point of novelty” \* \* \* and uses conveniently functional language, condemned by the Supreme Court in the *United Carbon Co.* case *supra*, and in *General Electric Co. v. Wabash Co.*, 304 U. S. 364.

“\* \* \* Inasmuch as it is well settled that one cannot have a patent for the function or effect but only for the machine which produces the same, under repeated decisions the claims are invalid because they are within this category.” (Citing many cases.)

*Thordarson Electric Manufacturing Co. v. General Transformer Corp.*, 93 F. 2d 36, followed by this Court in *Shull Perforating Co. Inc. v. Cavins, et al.*, 94 F. 2d 357 (C. A. 9).

Plaintiff admits on page 31 of its brief that:

“The descriptions relating to stresses and stress tensions and compressions and their location appearing in claims 1 and 2 of the patent (2,626,841) **were added by amendments in 1950 \* \* \*.**”

Plaintiff proudly announces that the Examiner handling the application [Ex. A, patent No. 2,626,841] did not object to the addition of this new matter on stresses and strains. Plaintiff however does not call attention to the fact that the same description on stresses and strains was also added to the divisional application [Ex. C], and the Examiner handling that application very **strenuously objected** to such introduction on the basis of new matter [see Ex. C, p. 21, Patent Office Action dated December 11, 1950].

This conclusively shows that patent No. 2,626,841 was granted by inadvertence and mistake. The Examiner handling Exhibit A had overlooked this question of new matter. This Court is not bound by an error of an administrative body.

It is submitted that patent No. 2,626,841 must be held invalid. The findings of the trial court finding invention in this patent are clearly erroneous on the evidence before this Court and admissions of plaintiff.

Consider: The only, the sole, the “essential” difference between non-invention and what the Patent Office allowed is a statement about stresses in tension and compression.

1. If “invention” is involved in these stresses—then they are essential; not obvious to one skilled in the art.
2. But they were not described in the application as filed—then they are a **material** variance and their addition in 1950 was improper and new matter.
3. Since they are “new matter” not supported by oath of applicant, the first patent No. 2,626,841 [Ex. A] is invalid.

Patent No. 2,724,172 which also employs references to stresses in tension and compression cannot be valid because it is also based upon a false premise. It employs and depends upon the stresses in tension and compression. It is either invalid because of prior use more than one year before its application was filed or it is invalid because of lack of invention. Any mechanic of normal skill would know that hitting with a hammer would loosen a member encircling another member. [See Trial Courts Comment at R. 1156]

### **PATENT NO. 2,724,172 IS ALSO INVALID.**

Plaintiff's argument fails to show that the 2,724,172 patent finds basis in the application as filed [Ex. A] for patent No. 2,626,841. The documentary proof also conclusively shows that **Exhibit A** as filed did not have the now “essential” description of stresses and strains. It may be necessary for this Court to read Exhibits A, B and C carefully, but the Supreme Court has done this in other cases.

“It will be observed that we have given particular attention to the *original* application, drawings, and models filed in the Patent Office by Thompson and Bachelder. We have deemed it proper to do this, because, if the **amended application** and model, filed by Tanner five years later, **embodied any material addition to or variance from the original**,—anything new that was not comprised in that,—such addition or variance cannot be sustained on the original application. \* \* \*

*Railway Co. v. Sayles*, 97 U. S. at 563 (wherein the plaintiff's complaint was dismissed).

In the present case the stresses and strains were not Potter's invention; they were put into the case by Potter's attorneys. The present case is controlled by *Steward v. American Lava Co.*, 215 U. S. 161, where the patent was held void because there was a variance introduced by amendment and not supported by oath.

The claims of patent No. 2,724,172 are directed to matter which differs essentially from what was in the parent case [Ex. A]. Therefore patent No. 2,724,172 and Exhibit B, is not within the purview of 35 U. S. C. §§120 and 121. Patent No. 2,724,172 must stand on its filing date of December 16, 1952. It is invalid because of prior public use prior to 1951 (35 U. S. C. §102(b)).

There is no invention in patent No. 2,274,172 (see pp. 2-3 of this reply). There is no invention over what was abandoned in Exhibit C. The non-inventive, functional variation between abandoned claim 1 of Exhibit C and claim 1 of patent No. 2,274,172 is shown on the attached sheet.

Defendant has the right to use what was in the prior art and to use mechanical skill: Defendant has the right to use what was abandoned because that is only prior art and not inventive.

1. The method of forming a self-aligning bearing having a bearing ball and a ductile bearing race,

said ball and race being formed with corresponding curved surfaces therebetween, comprising,

assembling said ball in an annular blank having an inner cylindrical surface substantially corresponding in diameter with that of the bearing ball and having opposite end portions,

compressing said end portions inwardly,

to conform and produce a binding engagement with the curved surface of said ball,

and finally compressing the median portion inwardly between the ends of the bearing race

to elongate the bearing race longitudinally toward its opposite ends

whereby the bearing surfaces between the bearing ball and race are released to permit free rotation between the ball and bearing race.

IN PUBLIC DOMAIN.

1. The method of forming a self-aligning bearing having a bearing ball and a relatively soft, ductile metal bearing race,

said ball and race being formed with corresponding curved surfaces therebetween, comprising,

assembling said ball in an annular blank having an inner cylindrical surface substantially corresponding in diameter with that of the bearing ball and having opposite end portions,

compressing said end portion inwardly in intimate and direct contact with said ball *to deform the cylindrical blank and place the same under a stress with the outer periphery stretched and the inner periphery under compression such that said blank will*

conform and produce a binding engagement around the curved surface of said ball,

and finally compressing the median portion of the bearing race by pressure applied through rolling contact

*relieving some of the compression stress in the metal and adjacent the inner periphery of said blank*

and elongating the bearing race evenly towards its opposite ends and

separating evenly the bearing surfaces between the bearing ball and bearing race by an amount sufficient to permit smooth rotation therebetween but still confine said ball within said race.

INVALID BECAUSE ONLY NON-INVENTIVE FUNCTIONAL VARIATION.

## PLAINTIFF MISREPRESENTS EFFECT OF EXHIBIT 2A.

The documentary proof before the Court irrefutably shows (and plaintiff does not deny):

(a) that chronological chart I is accurate (facing p. 8 of Deft. Br.);

(b) that the method claims solicited in divisional application [Ex. C] were finally rejected and abandoned October 1, 1951;

(c) that for 15 months [until Ex. B was filed in December, 1952], claims on the method here in suit were not before the Patent Office;

(d) that commercial use of the method here in suit took place for five years before application for patent '172 [Ex. B] was filed [Admissions, R. 996-997].

The above facts compel holding patent '172 invalid on prior public use (35 U. S. C. §102(b)) (Deft. Op. Br. pp. 49-50).

In a frantic attempt to plug up this abandonment of claims on the method here in suit and the statutory bar to patent '172, plaintiff resorts to **false representations** on pages 50-54 of its brief. Plaintiff there represents that Exhibit 2A (Application Serial No. 135,174) contained "like method claims" during this 14-15 month period. This representation is totally false; plaintiff's counsel forgets that he has a duty to the Court (as well as to his client) in making such representations.

The facts, as conclusively shown by Exhibit 2A are:

(1) The application [Ex. 2A] **does not** contain a single word of the hodgepodge about strains in tension and compression. It does not contain the new matter which was added to Exhibit A and B in March, 1950. It does not disclose the strains and stresses which appear in the claims of patent '172.



(2) The method claims solicited in Exhibit 2A were for a **different method** than that originally disclosed in Exhibit A (patent '841) and Exhibit C (abandoned) and in Exhibit B (patent '172).

(3) Exhibit 2A (patent '975) does describe a method which requires **heating the ball** to expand it (not described in '841 or '172) and described a peculiarly shaped race ring with triangular lips.

Application [Ex. 2A] was for a **different three-step process** which required the use of a race blank provided with outstanding triangular lips 10B and 10C (not shown in patents '841 or '172). Exhibit 2A as filed specifically states:

“The particular shape and presence of such lips 10B, 10C are of importance in producing the major novel results of the present invention” [Ex. 2A, p. 6, of specification as filed].

The “method” of Exhibit 2A comprised the three steps described on page 6 of the application as follows:

(1) Placing the race blank with its triangular lips into holding dies [p. 6, lines 4-11].

(2) “The second step consists in heating the ball 12 to a temperature in the neighborhood of 200°F. to expand it slightly, after which it is placed within the cylindrical opening 10A in the race member 10, as indicated in Fig. 5” [p. 6, lines 11-15 of Ex. 2A; col. 2, lines 46-50 of pat. '975].

(3) “The third step consists in applying pressure \* \* \* to deform the annular triangularly cross-sectioned lips 10B, 10C \* \* \*.”

After these steps and after the ball cools, the ball is supposed to rotate freely [p. 7, lines 1-7].



This is not the method disclosed in the original application [Ex. A], which resulted in patent '841. This is not the method which is based on stresses in tension and compression (added in 1950) and stated in patent '172. Plaintiff is challenged to point out where the step of heating and expanding a ball is specified in patents '841 or '172. Plaintiff is challenged to point out wherein Exhibit 2A (or patent '975 which issued thereon) contains a description of forming a race to "place the same under a stress with the outer periphery stretched and the inner periphery under compression," as stated in claims of patent '172.

Exhibit 2A is directed to a **different** method, employing hot balls and the expansion and contraction of such balls with temperature changes. Plaintiff admitted this was a different method—plaintiff did not sue defendant on patent '975 which matured from Exhibit 2A.

Plaintiff's statement that Exhibit 2A was "directed to the method of making the bearing being claimed in Exh. A" (Pltf. Br. p. 54) is totally inconsistent with the statement that the bearing of patent '841 was dependent upon the method of patent '172 (p. 4). The two methods are different. When plaintiff states that Exhibit 2A contained "like method claims" [like in Ex. C], plaintiff is making a false representation to the court and ignoring the ball heating step.

Since Exhibit 2A contained no reference to stresses in tension and compression, it could not support the claims of patent '172. Exhibit 2A was improperly introduced into evidence over defendant's objection.

Plaintiff's argument fails. The record and facts do not support the false argument. **Plaintiff had abandoned the method here in suit** (with its abortive stresses and strains) on October 1, 1951. Such method claims of patent '172 are invalid by reason of admitted commercial public use for more than one year prior to December, 1952.

Attention is drawn to the fact that Exhibit C was abandoned for failure to reply to the final rejection of December 11, 1950 [Ex. C, p. 21]; this constituted **abandonment of the application**. The application was revived by petition [Ex. C, p. 26] granted July 9, 1951 [p. 32]. But by failing to complete the appeal to the Board of Appeals, plaintiff **abandoned the alleged invention** stated in the claims on October 1, 1951.

### ERRONEOUS FINDINGS.

Plaintiff (on p. 45 of its brief) makes a half-hearted and laughable attempt to reconcile Finding II with other findings such as Finding XX and is now driven to state that when a

“\* \* \* race is **separated** from the ball by a very **small and unifom controllable clearance** \* \* \*”  
[Finding II].

that this is “comparable to” or the same as a condition where

“\* \* \* the ball actually becomes **frozen** in the race with substantially all of the entire available adjacent surfaces in binding engagement. Due to such binding, there is a condition of **zero clearance** \* \* \*”  
[Finding XX].

Certainly a small clearance is not the same as zero clearance.

Finding XXV is also in error and irreconcilable with other findings by referring to “freezing the ball in the race member after it is formed around the ball.” Plaintiff’s last minute switch desires freezing of the ball to be the same as a very small clearance. This ridiculous attempt to explain the conflicting findings indicates the **total ambiguity of the entire patent** and the confusion under which the trial court rendered the decision.

All of the findings which mention the fictitious “stress pattern” are clearly in error. This stress pattern or “means” [Finding LII] upon which the patents must rely (according to plaintiff)—this stress pattern was not disclosed in Exhibit A, the application of patent No. 2,626,841 as filed. Since this “stress pattern” is the only reason why the Patent Office allowed any claims, such stress pattern is a material variation over and above the original disclosure. Such important or essential variation certainly constitutes new matter. Such an essential portion of a purported invention must be supported by an oath. But none of these requirements were met.

Every finding which mentions this fictitious stress pattern such as Findings VII, XVII, XX, XXV, L, LII, LVII and LX are subject to the same error and are not sustainable.

Finding LIV is contrary to agreed fact 37 of the pre-trial order [R. 94]. Finding LIX “the claims of the patent No. 2,626,841 find a basis in the original disclosure to the Patent Office on July 23, 1945” is clearly wrong.

Attention is again specifically called to the fact that plaintiff's own expert admitted that whether the ring has a stress pattern or not, you still generate clearance between the ball and the race when you tap or hammer the outside of the race [R. 1122]. Therefore the fictitious stress pattern is simply a hodgepodge of words which confused the Patent Office and permitted the inadvertent issue of two patents.

### INVENTION DOES NOT LIE IN MINOR MATTERS OF DEGREE.

The trial court ignored the oft repeated rule that invention cannot be predicated on minor changes in size or degree.

*Kalich v. Patterson Pacific Parchment Co.*, 137 F.  
2d 649.

The erroneous findings are filled with references to questions of degree. Each such reference is based upon the premise that the prior art had the same thing, but to a lesser degree.

“Greater load-carrying capacities” [Finding XIV].

“Much smaller controllable looseness” [Finding XXIII].

“Stronger and have more applications” [Finding XXV].

“Largest possible uniform contact” [Finding XXVI].

“Larger forces” [Finding XXIII].

“Longer period of time” [Finding XXVIII].

“Simpler” [Finding XXIX].

“More inexpensive” [Finding XXIX].

“Made smaller more inexpensively” [Finding LVII].

Reliance upon such matters of degree shows that the patents in suit are invalid and at best represent only mechanical skill but not invention. This Court discussed the difference in *Talon Inc. v. Union Slide Fastener, Inc.*, ..... F. 2d ....., and in *Rohr Aircraft Corporation et al. v. Rubber Teck, Inc., et al.*, ..... F. 2d ..... The rules stated in these two recent cases require the patents in suit herein to be held invalid. Insignificant “carrying forward” of the prior knowledge is not invention and should not saddle the public with an inequitable burden (*Cole v. Hughes Tool Co.*, 215 F. 2d 924 (C. A. 10)).

### PLAINTIFF IS OVERREACHING.

Plaintiff's brief unfairly attempts to besmirch Mr. Fred Straub upon unsupported statements by plaintiff's counsel. Mr. Straub ran a job shop and did subcontracting work for various people; one Dick Reese of Adele precision Corp. was instrumental in starting Straub on bearings [R. 500-501] as early as 1949. During October 1950 to December 1952, defendant had a license from Halfco (a separate identity not involved in the suit) under the Spangenberg patent [R. 1412]. In accordance with the **different Spangenberg method which required the use of grease** [R. 504], Straub made bearings for defendant and marked them with the Spangenberg patent number [see Ex. 4-B; R. 307]. Viewed objectively and factually, it is clear that Straub and defendant were simply exercising the right of all individuals and members of the public to engage in business. The intervening rights exercised by them in making two-piece bearings which look like the old Fiegel bearing, more than one year prior to the addition of new matter to patent '841 and to the



filing of patent '172, are further reasons for holding these patents invalid.

Plaintiff fails to call attention to the fact that Potter, Hackman and Tracy were employed at Simmonds Aero-cessories, Inc., during 1944 [R. 249; R. 454]. This company is the owner of the Chambers patent 2,382,773 [R. 1407] and Tracy knew Chambers and Allen and the bearings shown in such patent. It was this knowledge by Potter, Tracy and Hackman which lead plaintiffs to start their own bearing business. Their bearing was not original with them; **they made no invention over what is shown in the Chambers patent.** They did not even have the decency to get a license under the Chambers patent.

### DECEPTION WAS PRACTICED UPON THE PATENT OFFICE.

Plaintiff's brief states:

"It was not necessary and no duty whatsoever, moral or otherwise, was imposed on Potter to inform the Patent Office of any public use in 1951 when the 2,724,172 patent was filed, since the 2,724,172 patent is entitled to the July 23, 1945 filing date."

Plaintiff ignores that the Supreme Court has stated:

"The far-reaching social and economic consequences of a patent, therefore, give the public a paramount interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope. \* \* \* **Those who have applications pending with the Patent Office or who are parties to patent law precedings have an uncompromising duty to report to it all facts con-**

cerning possible fraud or inequityableness underlying the applications in issue.”

*Precision Instrument Mfg. Co. v. Automotive Maintenance Machine Co.*, 324 U. S. 806.

Plaintiff **knew** when he filed Exhibit B (application for patent No. 2,724,172) **that it was not a division** of the original application Exhibit A. Plaintiff stated “ \* \* \* the present application being a continuation-in-part of my co-pending application Serial No. 767 filed August 8, 1947, now abandoned \* \* \*.” (See patent No. 2,724,172, col. 1, lines 19-20.) By using the words “**continuation-in-part**” he admitted that it was not the same as Exhibit C which had been abandoned almost fifteen months earlier. Plaintiff’s attorneys **knew at that time** that Exhibit C had been **rejected on the ground of new matter**. Plaintiff’s attorneys knew the facts but they caused Potter to send to the Patent Office an oath with Exhibit B, stating that he does not know and does not believe that this invention was ever known or used “more than one year prior to this application.” **This was false**. Plaintiff now alleges that patent No. 2,724,172 covers the same method which was being used by plaintiff in 1946.

Plaintiff’s position is totally inconsistent because on page 30 of Exhibit B, on February 22, 1954, plaintiff represents to the Patent Office that the claims being solicited in Exhibit B are “believed to distinguish in a patentable sense over the disclosure in applicant’s patent \* \* \*” (*sic*. 2,626,841).

Therefore although applicant represented to the Patent Office that Exhibit B distinguished over patent No. 2,626,841, he now is attempting to convince this Court



that the claims of patent No. 2,724,172 are for the same alleged invention as in original application [Ex. A] (patent No. 2,626,841).

The various misrepresentations made by plaintiff both to the Patent Office and to the court require application of the rules laid down by the Supreme Court in the *Precision Instrument* case quoted hereinabove. It is not to the public interest to have patents issue on misrepresentations to the Patent Office; it is not to the public interest for courts to permit patentees and their counsel to glibly change positions as occasion warrants with total disregard as to the facts involved.

### CONCLUSION.

Because of the burden of work, this Court should not be faced with the necessity of examining the detailed facts. However, when faced with generalized, erroneous findings, this Court has not hesitated to examine the facts and reverse the Trial Court.

“However, this court has not hesitated when convinced that a device showed neither novelty nor invention to so hold notwithstanding findings to the contrary by the trial court. See *Motoshaver, Inc. v. Schick Dry Shaver*, 1940, C. A. 9, 112 F. (2d) 701; *Madsen Iron Works v. Wood*, 1943, C. A. 9, 133 F. (2d) 416; *Wilson v. Byron Jackson Co.*, 1943, C. A. 9, 133 F. (2d) 644; *Schnitzer v. California Corrugated Culvert Co.*, 1944, C. A. 9, 140 F. (2d) 275. And see, *Altoona Theatres v. Tri-Ergon Corp.*, 1935, 294 U. S. 477; *Paramount Publix Corp. v. Tri-Ergon*, 1935, 294 U. S. 464; *Universal Oil Products Co. v. Globe Oil and Refining Co.*, 1944, 322 U. S.

471, 473; *Stuart Oxygen Co. v. Josephian*, 1947, C. A. 9, 162 F. (2d) 857.”

*Pointer v. Six Wheel Corp.*, 177 F. 2d 153 (C. A. 9).

Reversal is required in this case because the correct criteria of law were not applied by the trial court. Public interest and justice to defendant compel a holding that the patents are invalid and not infringed.

Dated: June 30, 1959.

Respectfully submitted,

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